

REMARKS

This response is submitted along with a request for a three month extension in reply to the Office Action dated February 11, 2008. Claims 8-13 are the only currently pending claims and all stand rejected. Applicant respectfully traverses.

In light of the remarks presented below, Applicant respectfully requests reconsideration and allowance of all now-pending claims of the present application.

Claim Rejections - 35 USC §103

Claims 8-13 stand rejected under 35 U.S.C. §102(e) as being anticipated by Botha (U.S. Patent No. 7,272,769). Applicant disagrees with this analysis.

Independent claim 8 recites, *inter alia*, that each transport channel is configured to process a signal according to one of a plurality of process schemes, the configuration of which is established during a call setup. This feature is not disclosed in Botha either expressly or inherently.

Botha is directed to a system and method for interleaving data in a wireless transmitter. The Office Action asserts that the above underlined feature of independent claim 8 is disclosed by col. 3, lines 48-60 and col. 4, lines 7-21 of Botha. FIG. 3 of Botha, which corresponds to the description of the above referenced passages, depicts the operation of the coding/multiplexing unit 254 of FIG. 2 (col. 3, lines 48-49). The coding/multiplexing unit 254 processes and multiplexes together transport blocks into radio frame data over one or more physical channels (col. 3, lines 37-39). However, Botha never, either expressly or inherently, discloses that the coding/multiplexing operations described in the cited passages are configured during a call setup.

As stated in MPEP 2131, citing the patent laws, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the present situation, it is clear that Botha fails to expressly describe that each transport channel is configured to process a signal according to one of a plurality of process schemes, the configuration of which is established during a call

Appl. No.: 10/029,933
Amdt. Dated August 5, 2008
Reply to Office Action of 02/11/2008

setup. Accordingly, the assertion of the Office Action that Botha discloses the above underlined feature could, at best, be characterized as an effort to assert that such feature is inherent based upon the disclosure of Botha. However, as stated at MPEP 2112, section IV, the “fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Additionally, in order to establish inherency, extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference”. “Inherency, however, may not be established by probabilities or possibilities.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-1951 (Fed. Cir. 1999).

In the present situation, there is nothing to “make clear that the missing descriptive matter is necessarily present in the thing described in the reference” as required under the patent laws. Thus, each and every feature of independent claim 8 is not disclosed in Botha, either expressly or inherently.

Claims 9-13 depend either directly or indirectly from independent claim 8 and thus include all the recitations of independent claim 8. Therefore, dependent claims 9-13 are patentable for at least those reasons given above for independent claim 8. Accordingly, Applicant respectfully submits that the rejections of claims 8-13 are overcome.

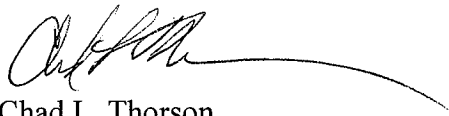
Appl. No.: 10/029,933
Amdt. Dated August 5, 2008
Reply to Office Action of 02/11/2008

CONCLUSION

In view of the remarks presented above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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